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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

PROTECT OUR WATER et al.,

Plaintiffs and Appellants,

v.

COUNTY OF STANISLAUS,

Defendant and Respondent.

DIABLO GRANDE LIMITED PARTNERSHIP  
et al.,

Real Parties in Interest and Respondents.

F042089

(Super. Ct. No. 307708)

**OPINION**

APPEAL from a judgment of the Superior Court of Stanislaus County. William Mayhew, Judge.

Rose M. Zoia, for Protect Our Water, San Joaquin Raptor Rescue Center and Steve Burke, Plaintiffs and Appellants.

County Counsel of Stanislaus County, for County of Stanislaus, Defendant and Respondent.

Russell A. Newman, Meyers, Nave, Riback, Silver & Wilson and Rick W. Jarvis for Diablo Grande Limited Partnership, Meyers, Nave, Riback, Silver & Wilson and Steven R. Meyers, for Diablo Grande, Inc., Real Parties in Interest.

**-ooOoo-**

Under the California Environmental Quality Act (CEQA), an “addendum” to a previously certified environmental impact report (EIR) need not be circulated for public review. (See Guidelines, §15164(c).)<sup>1</sup> A “subsequent EIR” and a “supplemental EIR” will undergo such public review. (See Guidelines, §§ 15162, 15163.) In this case we hold that the County of Stanislaus did not proceed in the manner required by law in approving an addendum to an environmental impact report. We will reverse the judgment of the superior court, and direct that court to issue a writ of mandate ordering the County to rescind its December 11, 2001 approval of an addendum to the EIR. We do not hold that an addendum necessarily would or would not be appropriate for the post-certification change which occurred here (a change in a water source for the project from

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<sup>1</sup> Public Resources Code section 21083 authorizes the state’s Office of Planning and Research to prepare, and the Secretary of the Resources Agency to adopt, “guidelines for the implementation of” CEQA by public agencies. These Guidelines are found at California Code of Regulations, title 14, section 15000 et seq., and section 15000 states that the Guidelines “are binding on all public agencies in California.” Our California Supreme Court has stated on more than one occasion that “[a]t a minimum, ... courts should afford great weight to the Guidelines except when a provision is clearly unauthorized or erroneous under CEQA.” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564, fn. 3; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391, fn. 2; *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123, fn. 4; in accord see *Black Property Owners Assn. v. City of Berkeley* (1994) 22 Cal.App.4th 974, 983-984, fn. 6; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1371, fn. 2; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608, 614, fn. 2; and *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 368, fn. 7.)

the Berrenda Mesa Water District to the Kern County Water Agency). We hold only that, on the facts of this case, the County did not proceed in the manner required by law in approving this particular addendum.

## **FACTS**

### **A. Prologue**

In *Stanislaus National Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, this court found inadequate an environmental impact report (EIR) for a project we described as a specific plan (the “Diablo Grande Specific Plan”) for the creation of a “29,500-acre destination resort and residential community in southwest Stanislaus County.” (*Id.* at p. 186.) We stated that “[t]he resort community (the project) was to include scenic open spaces, a wilderness conservation area, six golf courses, swim and tennis facilities, a hotel and executive conference center, a winery, vineyards, a research campus, municipal facilities, a ‘town center,’ shops and offices, and five ‘villages’ containing a total of 5,000 residential units.” (*Ibid.*) We stated that “under the facts of the present case the superior court erred in upholding the approval of an EIR which deferred any consideration of any significant environmental effects of supplying water to the new community.” (*Ibid.*)

After our decision in *Stanislaus National Heritage Project v. County of Stanislaus*, *supra*, the County did not simply prepare a revised EIR addressing water supply impacts. (See, e.g., *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1121.) Instead, it drafted the Diablo Grande Water Resources Plan, called that a “project,” and prepared a “supplemental EIR” on this new “project.” The County recertified the original EIR and certified the supplemental EIR. Protect Our Water (“POW”) and Steve Burke challenged the supplemental EIR in a superior court action. The superior court found the supplemental EIR to be legally deficient for four reasons. On an appeal by real party Diablo Grande Limited Partnership, we disagreed

with the superior court on three of the four reasons for finding the supplemental EIR to be deficient, but agreed with the superior court that the County erred in not requiring recirculation of the supplemental EIR after significant new information had been added to it. In our unpublished May 4, 2001 opinion on that second appeal, we directed the superior court to “modify its judgment in accordance with the views expressed in this opinion.” (*California Farm Bureau Federation et al. v. County of Stanislaus; Diablo Grande Limited Partnership, et al.* (May 4, 2001, F034500) [nonpub. opn.. p. 34].) The superior court did so on July 6, 2001. Its modified judgment included a writ of mandate which stated in pertinent part:

“YOU ARE HEREBY COMMANDED within 30 days of entry of judgment to set aside and void your recertification of the EIR, and the SEIR and all approvals related to the Diablo Grande Specific Plan or Phase 1 Project which rely upon the Diablo Grande Specific Plan EIR and SEIR as provided herein.

“Prior to recertifying the project, the county is directed to prepare either: (a) a subsequent EIR pursuant to CEQA guideline section 15162(a)(3) consistent with the requirements of *Diablo Grande 1* (48 Cal.App.4th 182). The new information justifying the subsequent report will be the specific water source or sources to be evaluated. The Court, however, makes or implies no finding that the sources could or could not have been known through the exercise of reasonable diligence. The report need not address the aspects of the EIR confirmed in *Diablo Grande 1*); or (b) a revised or amended Diablo Grande Specific Plan EIR consistent with the requirements of *Diablo Grande 1*, republishing a revised original plan.

“The County may recertify a portion of the project and reserve consideration of the remainder of the project for a later time, should it elect to do so. Prior to partial recertification, the County must prepare a supplemental EIR pursuant to guideline section 15163 (which need not address the aspects of the EIR confirmed in *Diablo Grande 1*, for that portion of the project being recertified, unless the County, after a reasonable opportunity for public participation and hearing, expressly makes each of the following findings on the record supported by substantial evidence:

“1. The specific water source to be utilized is substantially in compliance with CEQA in that:

“(a) it has previously been fully and adequately reviewed under CEQA as part of the instant SEIR review;

“(b) all interested parties have had sufficient opportunity to comment on the proposed use of the source in compliance with CEQA;

“(c) the legitimate concerns of all interested parties have been considered in compliance with CEQA.”

We preface what happened next with a reminder of a basic concept of CEQA – a concept which we stressed in *Stanislaus National Heritage Project v. County of Stanislaus*, *supra*, and which we repeat here. “[A]n EIR is prepared for a ‘project’ (Pub. Resources Code, §§ 21100, 21065) .... It is crucial ... for a government decision maker to know what the ‘project’ is that the decision maker is approving. Numerous cases have stated that ‘[o]nly through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal ... and weigh other alternatives in the balance’ and that ‘[a]n accurate, stable, and finite project description is the *sine qua non* of an informative and legally sufficient EIR.’ [Citations.]” (*Stanislaus National Heritage Project v. County of Stanislaus*, *supra*, 48 Cal.App.4th at pp. 200-201.)

While the second appeal was pending, the County on December 7, 1999 set aside and voided its “recertification of the Diablo Grande EIR and the SEIR and all approvals related to the Diablo Grande Specific Plan or Phase 1 Project that relied upon these environmental documents for approval.” The County Board’s agenda for that date makes clear that what the County was referring to by the words “the Diablo Grande EIR and the SEIR” was “the Diablo Grande Specific Plan EIR as supplemented by the [Diablo Grande] Water Resources Plan SEIR.” As we have already pointed out, the “Diablo Grande Water Resources Plan SEIR” (or simply “the SEIR”) was the document created

by the County to attempt to cure the deficiency in the Diablo Grande Specific Plan EIR we addressed in 1996 in *Stanislaus National Heritage Project v. County of Stanislaus*, *supra*. Also on December 7, 1999, the County then adopted a resolution “recertify[ing] the Diablo Grande Specific Plan EIR ... as supplemented by the Water Resources Plan SEIR ... only insofar as they address development of Phase 1 served with water from Berrenda Mesa and onsite groundwater.” The County apparently felt that these water sources (Berrenda Mesa and onsite groundwater) had been adequately analyzed in the Water Resources Plan SEIR, even if other possible water sources may not have been. (The superior court had found the analysis of the Berrenda Mesa water source, a purchase of water from the Berrenda Mesa Water District, to be adequate. No specific challenge to the analysis of the project area groundwater water source was raised. On the second appeal, we ultimately agreed with the superior court that the Berrenda Mesa water source had been adequately analyzed.

The County’s December 7, 1999 recertification of the Diablo Grande Specific Plan EIR as supplemented by the Water Resources Plan SEIR appears to have been a recertification of these environmental documents for a different “project” – the so-called “Phase 1” of the Diablo Grande development. As we explained in our 1996 opinion, the development of the Diablo Grande Specific Plan was to occur in stages or “phases.” (*Stanislaus National Heritage Project v. County of Stanislaus*, *supra*, 48 Cal.App.4th at pp. 188-189.) “Phase 1” included “most of the first village, 2,000 residential units, the hotel and conference center, the swim and tennis club, 2 golf courses and the access roads.” (*Ibid.*) It was to cover an area of roughly 2,000 acres. (*Id.* at p. 188.) The parties agree that this December 7, 1999 recertification of the environmental documents was for “Phase 1” only. Although “environmental considerations do not become submerged by chopping a large project into many little ones – each with a minimal potential impact on the environment – which cumulatively may have disastrous consequences’ [citation]” (*Citizens Assn. for Sensible Development of Bishop Area v.*

*County of Inyo* (1985) 172 Cal.App.3d 151, 165), the County's December 7, 1999 action was never challenged. And we now know, based on what we have been told by the parties on the present appeal, that the second appeal we decided (on May 4, 2001) appears to have been a decision about nothing – that is, we reviewed the adequacy of the Diablo Grande Water Resources Plan supplemental EIR for the Diablo Grande Specific Plan project one year and four months after that document was decertified by the County and one year and four months after the approvals for that project (the entire Diablo Grande Specific Plan) were rescinded on December 7, 1999. The parties to the present case were all appellants or cross-appellants on that second appeal, and none of them dismissed their appeals. So far as we know, there is still no longer any approved Diablo Grande Specific Plan project.

On December 11, 2001 the County approved an “Addendum to the Diablo Grande EIR.” The County also granted a “request to change conditions of approval for vesting tentative map 97-01, Diablo Grande, Unit 1 to add Kern County Water Agency (KCWA) water supply as an additional water supply option ....” Specifically, a so-called condition “57” had stated in pertinent part that “Diablo Grande (Limited Partnership) and/or Western Hills Water District shall obtain all required governmental approvals necessary for supplying all anticipated water needs of Phase 1 from the Berrenda Mesa option.”<sup>2</sup> This was changed on December 11, 2001 to “Diablo Grande [Limited Partnership] and/or Western Hills Water District shall obtain all required governmental approvals necessary for supplying all anticipated water needs of Phase 1 from the Berrenda Mesa or Kern County Water Agency (KCWA) Supply options.” These two December 11, 2001 actions of the County are the focus of the present litigation.

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<sup>2</sup> Western Hills Water District (WHWD) was the water district formed for the purpose of acquiring water for the entire Diablo Grande development, including Phase 1.

## **B. The Present Case**

Appellants POW and Burke filed a petition for writ of mandate on January 10, 2002. The petition made no mention whatsoever of the County's approval of the "Phase 1" project on December 7, 1999. Without specifying what it meant by the words "the project," the petition asked the superior court to issue a writ of mandate ordering the County to "set aside and void its approvals of the project including approval of the Addendum and to comply with all provisions of the California Environmental Quality Act, the Court's Modified Judgment on Remand and Peremptory Writ of Mandamus, and other applicable laws prior to further consideration of the project." Diablo Grande Limited Partnership filed a motion for judgment on POW's and Burke's petition for writ of mandate (see Code Civ. Proc., §1094). The County joined in the motion, and POW and Burke filed written opposition to the motion. POW and Burke did not appear for a scheduled September 11, 2002 hearing on the motion, and apparently no oral proceedings took place on that date or at any subsequent time. On October 10, 2002 the court issued an order granting Diablo Grande Limited Partnership's motion for judgment. The order stated in pertinent part: "The Motion is GRANTED. The petition for writ of mandamus is DENIED." POW and Burke now appeal.

### **APPELLANTS' CONTENTIONS**

Appellants do not state with any clarity or particularity the relief they seek with this appeal. Appellants' brief asks this court to "remand the case to the superior court with an order to reverse its judgment and enter a new judgment granting the Petition for Writ of Mandate." Appellant's "Petition for Writ of Mandate" in turn asked the superior court to direct the County to "set aside and void its approvals of the project including approval of the Addendum ...." What "project"? The only "project" that has been approved and has remained approved is the "Phase 1" project approved by the County on December 7, 1999, an approval nowhere mentioned by appellants in their petition for writ of mandate filed more than two years later on January 10, 2002. Approval of the Diablo

Grande Specific Plan project was rescinded on December 7, 1999. The Diablo Grande Specific Plan project has never been subsequently reapproved. In response to the County's assertion that Public Resources Code section 21167 provides for a statute of limitations of no more than 180 days to challenge a public agency's approval of a project, appellants simply assert that "[I]t is the December 11, 2001 action by the County with which POW takes issue in this lawsuit, timely filed on January 10, 2002." We will therefore assume, based upon appellants' representation, that they are not challenging the approval of the only project that has been approved – the Phase 1 project. They are challenging what they call the "approval of the Addendum." This was an Addendum to the EIR for the Phase 1 project. (As we have already mentioned, prior to December 11, 2001 the EIR for the Phase 1 project consisted of the Diablo Grande Specific Plan EIR [which included an analysis of the environmental effects of Phase 1], as supplemented by the Diablo Grande Water Resources Plan supplemental EIR.)

An addendum to an EIR "need not be circulated for public review." (Guidelines, § 15164(d).) A supplemental EIR (also referred to in Guidelines §15163(a) as a "supplement to an EIR") "shall be given the same kind of notice and public review as is given to a draft EIR under Section 15087." (Guidelines, §15163(c).) A "subsequent EIR" is also given notice and public review. (See Guidelines, § 15162(d).) Appellants want the public review that is not required for an addendum.

Appellants contend that the county erred in two ways in its December 11, 2001 approval of the Addendum. First, they argue that approval of the Addendum violated the superior court's July 6, 2001 writ of mandate issued after our remand on the second appeal. Second, they argue that even if the December 11, 2001 approval of the Addendum did not violate the superior court's July 6, 2001 writ of mandate, the County's Addendum modifying the Phase 1 project EIR otherwise violated CEQA. As we shall explain, we disagree with appellants' first contention but agree with the second.

## STANDARD OF REVIEW

“In an action to set aside an agency’s determination under [CEQA], the appropriate standard of review is determined by the nature of the proceeding below.... [S]ection 21168 “established the standard of review in administrative mandamus proceedings” under Code of Civil Procedure section 1094.5, while section 21168.5 “governs traditional mandamus actions” under Code of Civil Procedure section 1085. [Citation.] The former section applies to proceedings normally termed “quasi-adjudicative,” “in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency ....” [Citations.] The latter section applies to all other actions taken pursuant to CEQA and generally encompasses “quasi-legislative” decisions made by a public agency. [Citations.]’ [Citations.]

“The distinction, however, is rarely significant. In either case, the issue before the trial court is whether the agency abused its discretion. Abuse of discretion is shown if (1) the agency has not proceeded in a manner required by law, or (2) the determination is not supported by substantial evidence. [Citations.]

“[I]n undertaking judicial review pursuant to Sections 21168 and 21168.5, courts shall continue to follow the established principle that there is no presumption that error is prejudicial.’ [Citation.] However, ‘noncompliance with the information disclosure provisions of [CEQA] which precludes relevant information from being presented to the public agency, or noncompliance with substantive requirements of [CEQA], may constitute a prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5, regardless of whether a different outcome would have resulted if the public agency had complied with those provisions.’ [Citation.]

“On appeal, the appellate court’s ‘task ... is the same as that of the trial court: that is, to review the agency’s actions to determine whether the agency complied with procedures required by law.’ [Citation.] The appellate court reviews the administrative record independently; the trial court’s conclusions are not binding on it. [Citations.]” (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1374-1376.)

## I

## **THE COUNTY DID NOT VIOLATE THE SUPERIOR COURT'S JULY 6, 2001 WRIT OF MANDATE**

We reject appellants' argument that approval of the Addendum violated the language of the July 6, 2001 writ of mandate, as quoted above. Appellants' argument appears to us to ignore the fact that when the Phase 1 project was approved on December 7, 1999 (i.e., when there was what the writ calls "recertification" of "a portion of the project"), every water source to be utilized in Phase 1, as of the time of approval, had been "fully and adequately reviewed under CEQA as part of the instant SEIR review." These were the Berrenda Mesa and project area groundwater sources. A subsequent approval of a change to the approved project without adequate environmental review of the change does not void the prior approval of the project. The remedy for that CEQA violation, if there is one, is to set aside the approval of the change to the project. (*Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929; see also Kostka & Zischke, Practice Under the California Environmental Quality Act, Vol. 1, §19.29 (4/03).)

## **II**

### **THE COUNTY'S DECEMBER 11, 2001 APPROVAL OF THE ADDENDUM VIOLATED CEQA**

Public Resources Code section 21166 states:

"When an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs:

"(a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.

"(b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.

“(c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.”

At first blush, a change from one water source to another might appear to be a substantial change in the project which will require major revisions of the environmental impact report. (Pub. Res. Code, § 21166, subd. (a).) This is especially so since it appears that much of the water for Phase 1 was coming from the Berrenda Mesa source. Thus, with the change from the Berrenda Mesa source to the KCWA source, most of the water for Phase 1 would be coming from a source not even mentioned in the environmental documents relied on by the County when the County approved Phase 1 in December of 1999. But a change in the source of water for a project is not always, as a matter of law, an event which triggers the need for a subsequent or supplemental environmental impact report under Public Resources Code section 21166. (See *City of San Jose v. Great Oaks Water Co.* (1987) 192 Cal.App.3d 1005, at pp. 1015-1017.) And in *Fund for Environmental Defense v. County of Orange* (1988) 204 Cal.App.3d 1538, the court emphasized that Public Resources Code section 21166 does not establish a low threshold for preparation of a subsequent or supplemental EIR.

“An EIR is required in the first instance whenever a project ‘may have a significant effect on the environment.’ (§ 21151.) On the other hand, a subsequent or supplemental EIR is prepared under section 21166 only where it is necessary to explore the environmental ramifications of a substantial change not considered in the original EIR. (Cal. Code Regs. tit. 14, § 15162, subds. (a)(1) & (2); *Long Beach Sav. & Loan Assn. v. Long Beach Redevelopment Agency* (1986) 188 Cal.App.3d 249, 265 [232 Cal.Rptr. 772].) As was said in *Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065 at pp. 1073-1074 [230 Cal.Rptr. 413], ‘[S]ection 21166 comes into play precisely because in-depth review has already occurred, the time for challenging the sufficiency of the original EIR has long since expired (§ 21167, subd. (c)), and the question is whether circumstances have *changed* enough to justify *repeating* a substantial portion of the process. Thus, while section 21151 is intended to create a ‘low threshold requirement for preparation of an EIR’ [citation], [section 21166] indicates a quite different intent, namely, to restrict the powers of agencies ‘by prohibiting [them] from requiring a subsequent or supplemental

environmental impact report’ unless the stated conditions are met. [Citation.].’ (Original italics.)

“In deciding whether a public agency properly determined a subsequent or supplemental EIR was unnecessary, the standard of review is ‘whether the record as a whole contains substantial evidence to support a determination that the changes in the project [or its circumstances] were not so “substantial” as to require “major” modifications to the EIR.’ (Fn. omitted.) (*Bowman v. City of Petaluma*, *supra*, 185 Cal.App.3d at p. 1075; § 21168.)

“Our task on this appeal is the same as the trial court’s. We too must search the administrative record and determine, in light of the whole record, whether there is substantial evidence supporting the agency’s determination, and whether the agency ““abused its discretion by failing to proceed in the manner required by law.” [Citation.]’ (*Long Beach Sav. & Loan Assn. v. Long Beach Redevelopment Agency*, *supra*, 188 Cal.App.3d 249, 260, fn. omitted; *Bowman v. City of Petaluma*, *supra*, 185 Cal.App.3d at p. 1076.)” (*Fund for the Environmental Defense v. County of Orange*, *supra*, 204 Cal.App.3d at pp. 1544-1545, fns. omitted.)

It appears to us that the County’s determination that none of the triggering events of Public Resources Code section 21166 had occurred was not made by proceeding in the manner required by law. (See Pub. Resources Code, § 21166 and Guidelines, § 15162.) Instead, the County’s determination might perhaps be described as “I haven’t looked to see if the change in the project is substantial and will require major revisions of the environmental impact report, so I don’t see any substantial change in the project which will require major revisions of the environmental impact report.”<sup>3</sup> We will explain. The

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<sup>3</sup> We mention here that we mean no disrespect by this comment. We are not unsympathetic to the difficulties faced by a public agency attempting to comply with what we might characterize as the very generalized concepts embodied in many of the CEQA statutes. Deciding that something is not “substantial” (Pub. Res. Code, § 21166), or “major” (*ibid.*), or “significant” (Pub. Res. Code, § 21151) must at times seem like an open invitation to unwanted litigation from someone willing to say, in essence, “yes it is.” Our intention is simply to attempt to clarify the point we make in the rest of the text of part II of this opinion – that in deciding whether an addendum to the Diablo Grande Phase 1 project was appropriate, the County appears to have focused on the wrong

Addendum's explanation for finding that there are no substantial changes in the project which will require major revisions in the environmental impact report stated in pertinent part as follows:

“The KCWA Supply is now being utilized in place of the Berrenda Mesa Supply. This supply will be delivered in the same conveyance facilities, using the same canal, turnout and pipes. The only impacts which could occur due to this supply modification, are impacts in Kern County, which have been analyzed by Kern County Water Agency prior to authorizing the transfer. This environmental review is now complete and unchallenged. The KCWA, the Western Hills Water District, and the State Department of Water Resources have executed contracts and approved the transfer based on this environmental review.

“Based on the foregoing, the utilization of the KCWA Supply will not require ‘major revisions of the previous EIR ... due to the involvement of significant environmental effects or a substantial increase in the severity of previously identified significant effects,’ as all impacts were identified in previous environmental documents. That is, with the transfer of the KCWA Supply to the Diablo Grande project site, no new or increased impacts not previously disclosed will occur.”

Thus the analysis states in essence that whatever environmental impacts will result from the change “have been analyzed.” What are those impacts? The Addendum does not say. The Addendum in turn cites four documents.

One of the four documents is a “Kern County Water Agency Initial Study and Subsequent Negative Declaration, Western Hills Water District Contract to Transfer

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question (whether other environmental review was done in connection with a project other than the Diablo Grande Phase 1 project) rather than on the right question (whether there is a substantial change in the project, or with respect to the circumstances under which the project is being undertaken, which will require major revisions of the Diablo Grande Phase 1 EIR). (Pub. Res. Code, § 21166; Guidelines § 15162, § 15164(a).)

Water.”<sup>4</sup> It concludes with a declaration of KCWA general manager Thomas N. Clark, which states:

“I find that although the proposed project (Diablo Grande development project and water resources plan as modified by the Agency-Western Hills Contract, which also implements in part the Agency Pioneer Groundwater Recharge and Recovery Project) could have a significant effect on the environment, because all potentially significant effects of the Diablo Grande development project and water resources plan and the Agency Pioneer Groundwater Recharge and Recovery Project (a) have been analyzed adequately in the Previous CEQA Documents pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to the Previous CEQA Documents, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required. A SUBSEQUENT NEGATIVE DECLARATION will be prepared to confirm this conclusion. (CEQA Guidelines section 15162.)”

None of the “Previous CEQA Documents” listed appear, from their titles, to have anything to do with the supplying of water to Phase 1 (or indeed to the Diablo Grande Specific Plan project) from the KCWA. They were all compiled in 1999 or earlier, before any KCWA contract to supply Phase 1 water existed.

Another of the four documents is a “Kern County Water Agency Initial Study and Negative Declaration for the Pioneer Groundwater Recharge and Recovery Projects, and the KCWA Resolution No. 58-96 adopting this environmental document.” It is dated November 13, 1996, and does not mention the furnishing of water to Phase 1 by the

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<sup>4</sup> Appellants have asked this court to take judicial notice of a document purporting to be a June 5, 2000 written contract (entitled “Contract to Transfer Water”) between the Kern County Water Agency and the Western Hills Water District. Appellants’ request does not attempt to explain how this document would be of assistance to us in deciding this appeal. Nor was this document part of the administrative record or otherwise before the superior court when the superior court rendered its decision in this case. We therefore deny the request. (See *People v. Preslie* (1977) 70 Cal.App.3d 486, 492-495.) As our disposition of this case demonstrates, our denial of appellants’ request for judicial notice has not adversely affected the outcome of their appeal.

KCWA. The third and fourth documents are resolutions of the Kern County Water Agency and of the Western Hills Water District. None of these shed any light on what the environmental effects of supplying water to Phase 1 from the KCWA may be, and thus on whether the change in water source from Berrenda Mesa to KCWA is or is not a substantial change.

We do not here hold that an addendum would be inappropriate in this case. Nor do we hold (or imply) that an addendum would be appropriate. We simply hold that the County did not comply with “procedures required by law” in approving *this* (the Dec. 11, 2001) Addendum. (*Gentry v. City of Murrieta, supra*, 36 Cal.App.4th at p. 1376.) The pertinent question was not whether “all impacts were identified in previous environmental documents” unrelated to the Phase 1 project, or whether “no new or increased impacts not previously disclosed [in environmental documents other than the Phase 1 EIR] will occur.” It was whether any of the conditions of Public Resources Code section 21166 (see also Guidelines, § 15162) were met.

### **DISPOSITION**

The judgment is reversed. The superior court is ordered to issue a writ of mandate directing the County to set aside its December 11, 2001 approval of the amendment to condition “57” and its approval of the Addendum. Costs to appellants.

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Ardaiz, P.J.

WE CONCUR:

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Levy, J.

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Gomes, J.